

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN EDWARD KIRBY,

Petitioner,

v.

WARDEN BRIETENBACH,

Respondents.

Case No. 3:24-cv-00002-ART-CSD

ORDER

Petitioner John Edward Kirby, a *pro se* Nevada prisoner, has not properly commenced this habeas action by either paying the standard \$5.00 filing fee or filing a complete application for leave to proceed *in forma pauperis* (“IFP”). He submitted a Petition for Writ of Habeas Corpus (ECF No. 1-1) under 28 U.S.C. § 2254, a Motion for Appointment of Counsel (ECF No. 1-2) as well as an Application to Proceed *in forma pauperis* (ECF No. 5). The IFP application, however, is incomplete.

Pursuant to 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a \$5.00 filing fee is required to initiate a habeas action in a federal district court. The Court may authorize an indigent prisoner to begin a habeas action without paying the \$5 fee if he or she submits an IFP application on the approved form and includes three specific documents: (a) the prisoner’s financial declaration and acknowledgement showing an inability to prepay fees and costs, (b) a financial certificate signed by the prisoner and an authorized prison official, and (c) a copy of the prisoner’s account statement for the six-month period prior to filing. 28 U.S.C. § 1915(a); LSR 1-1, LSR 1-2.

Here, Petitioner has requested IFP status to waive his filing fee. However, he did not submit a financial certificate signed by an authorized officer at the Nevada Department of Corrections. In addition, Petitioner has not submitted a

1 certified copy of his inmate trust account statement for the six-month period
2 preceding this habeas action.

3 Although he may qualify for IFP status, the Court is unable to make such
4 determination without all of the correct documents. Petitioner's IFP application
5 lacks the appropriate financial information and documentation required by
6 § 1915(a) and the Local Rules and is therefore denied without prejudice.

7 Petitioner will have 45 days from the date of this order to either pay the \$5
8 filing fee or submit a complete IFP application with all required documentation.

9 It is therefore ordered that the initial screening of the Petition for Writ of
10 Habeas Corpus (ECF No. 1-1) under the Rules Governing Section 2254 Cases and
11 consideration of Petitioner's Motion for Appointment of Counsel (ECF No. 1-2) is
12 deferred to until such time as he has fully complied with this order.

13 The Clerk of Court is instructed to send Petitioner a blank form IFP
14 application for incarcerated litigants along with instructions, and a copy of this
15 order.

16 It is further ordered that, within 45 days of the date of this order, Petitioner
17 must file an IFP application that includes a: (a) financial certificate signed by
18 Petitioner and an authorized prison official, (b) financial declaration and
19 acknowledgement signed by Petitioner, and (c) copy of Petitioner's inmate
20 account statement for the six-month period prior to filing. Alternatively, Petitioner
21 must pay the \$5 filing fee within 45 days of the date of this order. If Petitioner
22 decides to pay the filing fee from his inmate account, he must arrange to have a
23 copy of this order attached to the check for the filing fee.

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1 It is further ordered that Petitioner's failure to comply with this order within
2 45 days by either submitting a complete IFP application, or paying the filing fee
3 will result in the dismissal of this action without prejudice and without further
4 advance notice.

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7 DATED THIS 25th day of January 2024.

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10 ANNE R. TRAUM
11 UNITED STATES DISTRICT JUDGE
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